IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

ORDER

S.B.CIVIL WRIT PETITION NO.6415/1998.

Babulal Agarwal. **VERSUS** State of Raj. & Anr.

15.11.2006.

HON'BLE MR.JUSTICE DALIP SINGH

Mr.G.S.Bapna, for the petitioner.
Mr.B.K.Sharma, Deputy Government Advocate.

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The petitioner in this writ petition has challenged the order (Annexure-21) dated 15.09.1998 by which the respondents have declined to grant the mining lease for sandstone to the petitioner.

The facts in nutshell are that the petitioner made a bid for the grand of a mining lease in the year 1977 and consequently on the bid having been accepted, deposited an amount of Rs.40,000/- as required by the respondents. Thereafter, certain disputes arose and the petitioner approached this court by means of writ petition being S.B.Civil Writ Petition No.636/1979. During the pendency of the aforesaid writ petition, it appears that negotiations took place between the petitioner and the respondents and the petitioner submitted that the respondents informed the petitioner that if the writ petition is withdrawn, the allotment shall be made. Consequently, the petitioner got the writ petition dismissed as not pressed. The order to this effect is available as Annexure-5. After the decision of the writ petition by this court on 16.08.1984, the petitioner was again asked to deposit the fees etc. for

the registration of the lease. On scrutiny, it appears that some part of the area for which the petitioner had originally submitted the bid was found to be the part of the forest area and, therefore, re-demarcation was done and ultimately an area of 4.7323 Sq.Km was only found to be available. In respect of the aforesaid area, the petitioner was to complete certain formalities and the petitioner submitted that he had already deposited the amount, as required and, therefore, nothing more was required to be done by the petitioner. Considerable time had elapsed when the demarcation of the land was done and the report with regard to the plotting of the area is also available on the record. The petitioner, thereafter received a notice (Annexure-19) dated 15.05.1998. The said notice reads as under:-

> "विषयान्तर्गत मामले में लेख है कि प्रासंगिक स्वीकृति पर अग्रिम कार्यवाही करने के पूर्व आपको अपना पक्ष प्रस्तुत करने हेतु सुनवाई का एक मौका दिया जाता है । अतः आप दिनांक 5.6.98 को प्रासंगिक स्वीकृति आदेश पर अपना पक्ष प्रस्तुत करने के लिए निदेशक खान एवं भू-विज्ञान विभाग, उदयपुर के समक्ष उपस्थित होवें । यदि आप किसी कारण वश स्वयं उपस्थित होने में असमर्थ हों तो अपना लिखित प्रत्युत्तर 15 दिन में प्रस्तुत कर देवें ।"

It is contended by the learned counsel for the petitioner that even the aforesaid notice did not give any reflection as to what the respondents intended to do by the aforesaid notice. The term "अग्रिम कार्यवाही" did not explain or reflect anything as to whether it was for the purpose of allotment or for the cancellation of the order of allotment. Be that as it may, the petitioner submitted a detailed representation to the Minister (Annexure-20) dated 04.08.1998 pointing out that the matter has been pending for last 20 years and that the

petitioner has been driven from pillar to post and the allotment had not been made. Thereafter, the impugned order (Annexure-21) has been passed by which the petitioner has been informed that the orders dated 22.09.1984 and 11.12.1991 are being set aside and the allotment made in favour of the petitioner is being set aside and the petitioner is entitled to the refund of the amount of Rs.40,000/- which has been deposited by him.

Learned counsel for the petitioner has contended that from the order Annexure-21 all that has been said is that out of the balance area of 4.7323 Sq.Km of the original area of 13 Sq.Km, part of the area is covered by the forest, siwai chak gair mumkin, abadi siwai chak, mandir, charagah, road, khatedari, gair khatedari land. It is submitted by the learned counsel for the petitioner that in the aforesaid order it is nowhere disclosed as to what is the extent of the forest land out of balance area of 4.7323 Sq.Km or the extent of the area of siwai chak gair mumkin, abadi siwai chak, mandir, charagah, road, khatedari, gair khatedari land and if at all these areas are to be excluded whether any area is still available for allotment for the purpose of mining and if at all the balance area which remained is within the permissible area of the mining lease of sandstone. It is submitted that the order does not give any details and is silent on these material aspects.

Learned Deputy Government Advocate does not dispute the fact that so far as the order (Annexure-12) is concerned, the same does not reflect as to the extent of the area covered by the aforesaid categories of land on

account of which the allotment of the lease in favour of the petitioner has been ordered to be canceled. He, however, submits that the respondents have taken care to compensate the petitioner by refunding the petitioner an amount of Rs.40,000/-. It has also been submitted that the petitioner has alternative efficacious remedy of filing appeal before the State Government against the impugned order since the impugned order has been passed by the Director.

Having considered the above submissions made by the learned counsel for the parties, I am of the view that while it is correct that the petitioner has an alternative efficacious remedy of preferring appeal against the impugned order, however, even in the appeal the respondents would be required to point out the extent of the areas of siwai chak gair mumkin, abadi siwai chak, mandir, charagah, road, khatedari, gair khatedari land on account of which the allotment could not have been made in favour of the petitioner. As such, even after excluding these categories of land any area is still available for the purpose of allotment for the mining of sandstone. There is no reason disclosed why the petitioner could not be allotted land for the mining of sandstone out of the balance area if any is left.

In view of the above, I am inclined to set aside the order Annexure-21 and send the matter to the Government for determination of the question as to whether after excluding the categories of the land which have been mentioned in Annexure-21 if at all there is any land available for the allotment to the petitioner for the purpose of mining of sandstone. The respondents

shall make an offer to the petitioner for the balance area and if at all the petitioner is inclined to accept the same, he will submit acceptance within thirty days for making the allotment to him. The amount of Rs.40,000/- may be adjusted proportionality against the petitioner, if at all the same is allotted to the petitioner. The petitioner may approach the Government within thirty days and it is expected that the Government would take a decision in the matter within thirty days thereafter since the matter is an old one.

Subject to the above, this writ petition stands disposed of.

(DALIP SINGH),J.

Solanki DS, Jr.P.A.